

## FEDERAL COMMUNICATIONS COMMISSION

IN THE MATTER OF:

INQUIRY CONCERNING THE DEPLOYMENT OF : GN DOCKETS 09-47 AND  
ADVANCED TELECOMMUNICATIONS CAPABILITY : 09-137  
TO ALL AMERICANS IN A REASONABLE AND :  
TIMELY FASHION, AND POSSIBLE STEPS TO :  
ACCELERATE SUCH DEPLOYMENT PURSUANT :  
TO SECTION 706 OF THE TELECOMMUNICATIONS :  
ACT OF 1996, AS AMENDMENT BY THE :  
BROADBAND DATA IMPROVEMENT ACT :

A NATIONAL BROADBAND ACT FOR OUR FUTURE : GN DOCKET 09-51  
: NOVEMBER 16, 2009

### COMMENTS – NBP - #13

#### THE CONNECTICUT INTERNET SERVICE PROVIDERS ASSOCIATION, INC.

The Connecticut Internet Service Providers Association, Inc. (“CTISPA”) provides these Comments to address certain aspects of NBP Public Notice #13 to urge the Federal Communications Commission (the “Commission”) to give substantial weight to the Berkman Study in developing a National Broadband Plan. In particular, the Berkman Study demonstrates that, in other countries, open access policies have been a large catalyst for the development of competition in the broadband market and ultimately have resulted in strong broadband performance. As the Commission formulates a National Broadband Plan, the Commission should consider implementing regulations that encourage open access by providing for the unbundling of broadband network elements at regulated (TELRIC or TSLIRC) rates.

#### **I. BACKGROUND**

The CTISPA is a non-stock, non-profit corporation formed to promote the development of Internet and other online services and advocate for the common business interests of those

engaged in the internet service providers' industry. CTISPA was formed in 2001 to promote these interests.

All of CTISPA's members provide or use wireline-based broadband services and do not provide voice services or regulated broadband services. Under the regulatory regime implemented by the FCC and in Connecticut, CTISPA members are not required to be certified local exchange carriers ("CLECs") since they are not providing voice services. Because of this, CTISPA's members are required to purchase broadband services from the Connecticut ILEC (AT&T Connecticut) at retail rates and ISPs are not permitted to collocate facilities at the ILEC tandem or end offices. Under the current federal regulatory regime, the Connecticut ILEC is not required to sell CTISPA members unbundled elements of its broadband services unbundled or at TELRIC rates or its broadband services at wholesale rates. See 47 U.S.C. §§ 251 and 252. In addition, under the current regulatory regime, CTISPA members, as well as Connecticut end users, are required to purchase both DSL and voice services as part of a broadband offering – Connecticut end users are not permitted to purchase just DSL from ISPs (i.e. "naked DSL"). Thus, any CTISPA customer also incurs the cost of an unnecessary voice line to obtain a CTISPA's DSL service. All of these existing regulatory barriers make growth in providing wireline broadband services virtually impossible due to the high cost of providing an affordable broadband service, reduce competition because competitors are unable to enter the market and compete and ultimately result in the end user paying inflated costs for wireline broadband service.

## **II. DISCUSSION**

### **A. The Commission Should Give Weight to the Berkman Study In Developing a National Broadband Plan**

The Commission seeks information and recommendations regarding the usefulness of the Berkman Study as it develops a National Broadband Plan. The Commission should give substantial weight to the Berkman Study as it summarizes the successes and failures of other countries as they seek to transition to high capacity, broadband networks.

*1. The Berkman Study Highlights the Necessity of Open Access*

As demonstrated in the Berkman Study, countries that have utilized an open access policy, including unbundling of network elements at regulated rates to **all** competitors (not just those that also compete with voice services), have experienced higher levels of competition, which has resulted in greater broadband penetration and also resulted in improvement on speeds, technological progression, reduced prices and service innovations. “By requiring incumbents to sell, at regulated rates, the most expensive, and in the case of local loop and shared access, lowest-tech elements of their networks, regulators enable competitors to invest a fraction of the total cost of setting up a competing network, focus that investment on the more technology-sensitive and innovate elements of the network and compete.” Berkman Study at 77.

Currently, in Connecticut, in order to provide wireline broadband services, ISPs must purchase broadband offerings from the ILEC at retail rates. In addition, ISPs are not permitted to collocate at ILEC facilities because ISPs are not CLECs. Therefore, an ISP must purchase the ILEC’s entire broadband offering, including the network elements of the loop and DSLAM at retail rates, pay to have traffic routed to their facility and then must bear the cost for both their router and ATM circuit to access the Internet. In addition, in Connecticut, ISPs are required to purchase both broadband services as well as voice, even though they are not offering voice services to their customers. Altogether, this process is unduly burdensome and costly on an ISP

and has resulted in little to no growth in the industry and ultimately results in higher cost to end users and lack of broadband availability, particularly in rural portions of the State.

In formulating a National Broadband Policy, the Commission should require unbundling of network elements for broadband offerings and requiring such network elements to be offered at regulated (TELRIC) rates to all competitors including ISPs. Beyond this baseline requirement, the Commission should also consider implement regulations requiring ILECs to permit providers of internet services only (not voice only) to collocate at ILEC facilities without the requirement of becoming a CLEC.

Finally, the Commission should permit ISPs, and ultimately end users, to purchase Internet services without the requirement of purchasing voice services from the ILEC (ie, naked DSL). Naked DSL is important for two reasons to Connecticut ISPs. The first is that AT&T, in Connecticut, often causes disruption in the DSL service because AT&T mistakenly disconnects or eliminates the voice portion of the loop due to billing errors or misinformation in the billing system. Second, AT&T may receive orders relating to the voice services of a customer of a CTISPA member which then cause the disconnection of the entire loop (including DSL) that requires a restoral which takes many weeks to occur. Finally, unlike in many states, the process of becoming and maintaining a CLEC license in Connecticut can be burdensome to small companies such as the CTISPA members thereby making collocation and loop purchase unfeasible. It is simply not realistic, in Connecticut, to become a CLEC absent a larger national footprint. This can be seen in the small number of active CLECs in Connecticut.

All of these improvements to the regulatory landscape will promote increased penetration of broadband services, promote innovation through increased competition and ultimately lower consumer costs.

### III. CONCLUSION

CTISPA believes that requiring open access and requiring regulated rates of unbundled network elements for broadband services will enable wireline ISPs to more rapidly enter the broadband market and more easily provide a competitive product for consumers to purchase. CTISPA believes that the Berkman Study demonstrates the success of this requirement in other countries that are far more advanced

Respectfully Submitted,



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